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AGREEMENT BETWEEN THE UNITED STATES AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY, SIGNED AT VIENNA ON JULY 13, 1990, PURSUANT TO 42 U.S.C. 433(e)(1)

MARCH 7, 1991.—Message and accompanying papers referred to the Committee on Ways and Means and ordered to be printed

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To the Congress of the United States:

Pursuant to section 233(e)(1) of the Social Security Act, as amended by the Social Security Amendments of 1977 (Public Law 95–216; 42 U.S.C. 433(e)(1)), I transmit herewith the Agreement between the United States of America and the Republic of Austria on Social Security, which consists of two separate instruments—a principal agreement and an administrative arrangement. The Agreement was signed at Vienna on July 13, 1990.

The United States-Austria Agreement is similar in objective to the social security agreements already in force with Belgium, Canada, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to eliminate dual social security coverage and taxation, and to help prevent the loss of benefit protection that can occur when workers divide their careers between two countries.

I also transmit for the information of the Congress a comprehensive report prepared by the Department of Health and Human Services, which explains the provisions of the Agreement and provides data on the number of persons affected by the Agreement and the effect on social security financing as required by the same provision of the Social Security Act. I note that the Department of State and the Department of Health and Human Services have recommended the Agreement and related documents to me.

I commend the United States-Austria Social Security Agreement and related documents.

GEORGE BUSH.

THE WHITE HOUSE, *March 7, 1991.*

AGREEMENT

BETWEEN THE UNITED STATES OF AMERICA

AND THE REPUBLIC OF AUSTRIA

ON SOCIAL SECURITY

The Government of the United States of America and
the Government of the Republic of Austria,

Being desirous of regulating the relationship between their two countries in the area of social security,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

(1) For the purposes of this Agreement,

(a) "Austria" means the Republic of Austria, and "United States" means the United States of America;

(b) "territory" means, as regards Austria, its federal territory, and, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa;

(c) "national" means, as regards Austria, a citizen of Austria, and, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended;

(d) "laws" means, as regards Austria, the laws, regulations and statutory instruments which relate to the branches of social security specified in subparagraph (1)(a) of Article 2, and, as regards the United States, the laws and regulations specified in subparagraph (1)(b) of Article 2;

(e) "competent authority" means, as regards Austria, the Federal Minister responsible for the application of the laws specified in subparagraph (1)(a) of Article 2, and, as regards the United States, the Secretary of Health and Human Services;

(f) "agency" means, as regards Austria, the institution responsible for the application of the Austrian laws, and, as regards the United States, the Social Security Administration;

(g) "competent agency" means the agency responsible for applying the laws in a specific case;

(h) "period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

(i) "benefit" means any cash benefit provided for in the laws of either Contracting State, including all components thereof provided out of public funds, all increments, readjustment sums, additional allowances and lump-sum payments;

(j) "refugee" means a person defined as a refugee in Article 1 of the Convention relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967;

(k) "stateless person" means a person defined as a stateless person in Article 1 of the Convention relating to the Status of Stateless Persons dated September 28, 1954.

(2) Any other expression used in this Agreement shall have the meaning assigned to it in the laws being applied.

Article 2

(1) This Agreement shall apply:

(a) as regards Austria,

(i) to the laws concerning pensions insurance, with the exception of the special insurance for notaries;

and, with regard to Part II only,

(ii) to the laws concerning sickness insurance and accident insurance;

(b) as regards the United States, to the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections, and

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters.

(2) This Agreement shall also apply to any laws which amend or supplement the laws specified in paragraph 1 of this Article.

(3) Unless otherwise provided in this Agreement, laws within the meaning of paragraph (1) of this Article shall not include treaties or other international agreements concluded between one Contracting State and a third state, except insofar as they contain provisions relating to the apportionment of insurance burdens.

Article 3

This Agreement shall apply to:

(a) persons who are or have been subject to the laws of one or both Contracting States;

(b) other persons with respect to the rights they derive from the persons mentioned in subparagraph (a).

Article 4

(1) Unless otherwise provided in this Agreement, nationals of one Contracting State who are or have been subject to the laws of that Contracting State and who reside in the territory of the other Contracting State shall, together with other persons who derive rights from the foregoing, receive equal treatment regarding eligibility for and payment of benefits with the nationals of the other Contracting State.

(2) With regard to provisions of Austrian laws concerning the crediting of periods of war service and periods considered as such, United States nationals shall receive equal treatment with Austrian nationals provided they had Austrian nationality immediately before March 13, 1938.

(3) Provisions relating to the apportionment of insurance burdens that may be contained in international treaties shall not be affected.

Article 5

(1) Unless otherwise provided in this Agreement, any provision of the laws of a Contracting State under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Contracting State shall not be applicable to nationals of a Contracting State, refugees or stateless persons, or other persons who derive rights from the foregoing, who reside in the territory of the other Contracting State.

(2) As regards Austrian laws, paragraph (1) of this Article shall not apply to:

(a) the compensatory supplement ("Ausgleichszulage") and

(b) those parts of the Austrian pension which are based on

(i) periods of coverage under the provisions of the Austrian Federal Act of November 22, 1961, concerning entitlement to benefits and rights in course of acquisition in the field of pensions insurance for gainful occupation outside Austria or

(ii) periods of self-employment completed outside the territory of Austria, but within the territory of the former Austro-Hungarian Monarchy.

PART II

PROVISIONS ON COVERAGE

Article 6

Unless otherwise provided in Articles 7 through 9, persons who are employed or self-employed within the territory of one of the Contracting States shall, with respect to that work, be subject to the laws of only that Contracting State even when the place of residence of the person concerned or the principal place of business of the employer is located in the territory of the other Contracting State.

Article 7

(1) If a person in the service of an employer having a place of business in the territory of one Contracting State is sent by that employer to the territory of the other Contracting State for a temporary period, the person shall be subject to the laws of only the first Contracting State as if the person were employed in its territory, provided

that the employment in the territory of the other Contracting State is not expected to exceed five years.

(2) A person who would otherwise be compulsorily covered under the laws of both Contracting States with respect to self-employment and who is a resident of one Contracting State shall be subject to the laws of only the Contracting State of which the person is a resident.

(3) (a) If a person is employed as an officer or member of a crew on an aircraft and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the Contracting State in whose territory the employer is headquartered.

(b) When an Austrian national is sent to perform services in the United States for an Austrian air transport organization, paragraph (1) of this Article shall be applied without reference to the 5-year time limit.

(4) If a person is employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the Contracting State whose flag the vessel flies. For purposes of the preceding sentence, a vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

Article 8

(1) This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

(2) Notwithstanding Article 6, nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State, but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in paragraph (1), shall be subject to the laws of only the first Contracting State.

(3) Paragraph (2) of this Article shall apply as appropriate to the Representative of the Austrian Trade Commission and to the Representative's assistants, and to persons employed by the Austrian National Tourist Office in the United States.

(4) Paragraph (2) of this Article shall apply to employees of the Federal Government of the United States or any of its instrumentalities.

(5) A person employed by the American International School in Austria shall be exempt from Austrian laws if he is a United States national, or a national of a State other than a Contracting State who does not reside in Austria.

Article 9

(1) At the request of an employed person and his employer or a self-employed person, the competent authorities of the two Contracting States may provide, by mutual agreement, for exceptions to Articles 6 through 8 of this Agreement, taking into account the nature and circumstances of the work.

(2) Where, in accordance with paragraph (1) of this Article, a person is subject to Austrian laws, those laws shall apply to him as if he were employed in the territory of Austria.

PART III

PROVISIONS CONCERNING BENEFITS

Article 10

(1) Except as otherwise provided in this Agreement, if a person has completed periods of coverage under the laws of both Contracting States, these periods, insofar as they do not coincide, shall be added together for the purpose of establishing entitlement to a benefit.

(2) When it is not possible to determine the time when specific periods of coverage were completed under the laws of one of the Contracting States, it shall be presumed that such periods do not coincide with periods of coverage completed under the laws of the other Contracting State.

Chapter 1

Benefits Under Austrian Laws

Article 11

(1) When a person who has completed periods of coverage under the laws of both Contracting States, or the survivor of such a person, claims a benefit, the competent Austrian agency shall determine the amount of the benefit in the following manner:

(a) The agency shall determine, in accordance with Austrian laws, whether the claimant is entitled to a benefit by adding together the periods of coverage, as provided in Article 10.

(b) If the claimant is entitled to a benefit, the agency shall first calculate the theoretical amount of the benefit which would be payable if all the periods of coverage completed under the laws of both Contracting States had been completed exclusively under Austrian laws; in cases where the amount of the benefit is independent of the duration of the periods of coverage, this amount shall be taken to be the theoretical amount.

(c) The agency shall then calculate the partial benefit to be paid based on the amount calculated under subparagraph (b) in proportion to the ratio between the duration of the periods of coverage to be taken into consideration under Austrian laws and the total duration of the periods of coverage to be taken into consideration under the laws of both Contracting States.

(2) Where the periods of coverage to be taken into consideration under Austrian laws for the purpose of calculating the amount of a benefit are in aggregate less than 12 months, no benefit under those laws shall be paid. However, the preceding sentence shall not apply if entitlement to that benefit has been established under Austrian laws exclusively on the basis of periods of coverage completed under those laws.

Article 12

The competent Austrian agency shall apply Articles 10 and 11 according to the following rules:

(1) In determining the agency responsible for paying a benefit, only periods of coverage under Austrian laws shall be taken into consideration.

(2) Articles 10 and 11 shall not apply to eligibility requirements for or payment of the miners' long service allowance ("Bergmannstreuegeld") under miners' pensions insurance.

(3) For the application of Article 10 and paragraph (1) of Article 11, a quarter of coverage under United States laws shall be treated as 3 months of coverage under Austrian laws.

(4) For the application of paragraph (1) of Article 11, the following shall apply:

(a) periods during which the insured person was entitled to a retirement or disability benefit under United States laws shall be treated as if they were neutral periods ("neutrale Zeiten");

(b) the basis of assessment ("Bemessungsgrundlage") shall be determined by taking into account periods of coverage only under Austrian laws;

(c) contributions for supplementary insurance ("Hoeherversicherung"), the miners' supplementary benefit ("knappschaftlicher Leistungszuschlag"), the

helpless person's allowance ("Hilflosenzuschuss") and the compensatory supplement shall be disregarded.

(5) For the application of subparagraphs (1)(b) and (c) of Article 11, periods of coverage shall be taken into consideration even if they coincide.

(6) If, for the application of subparagraph (1)(c) of Article 11, the total duration of the periods of coverage to be taken into consideration under the laws of both Contracting States exceeds the maximum number of months of coverage specified under Austrian laws for the calculation of the rate of increments, the partial pension payable shall be calculated in proportion to the ratio between the duration of the periods of coverage to be taken into consideration under Austrian laws and the maximum number of months of coverage referred to above.

(7) For the calculation of the helpless person's allowance, subparagraphs (1)(b) and (c) of Article 11 shall apply; Article 14 shall apply as appropriate.

(8) The amount calculated according to subparagraph (1)(c) of Article 11 shall be increased, where appropriate, by increments for contributions for supplementary insurance, the miners' supplementary benefit, the helpless person's allowance and the compensatory supplement.

(9) If the award of benefits under miners' pensions insurance depends on the completion, in specific undertakings, of essentially mining activities, within the meaning of Austrian laws, then only those periods of coverage under United States laws which are based on a similar occupation in a similar undertaking shall be taken into consideration.

(10) Special payments ("Sonderzahlungen") shall be payable in the amount of the Austrian partial benefit; Article 14 shall apply as appropriate.

Article 13

(1) If a person is entitled to a benefit under Austrian laws without the application of Article 10, the competent Austrian agency shall pay the benefit which would be payable exclusively on the basis of the periods of coverage to be taken into consideration under those laws, provided the person is not entitled to a corresponding benefit under United States laws.

(2) The benefit amount determined in accordance with paragraph (1) of this Article shall be recalculated in accordance with the provisions of Article 11 as soon as the person becomes entitled to a corresponding benefit under United States laws. This recalculation shall have effect from the beginning date of the benefit payment under United States laws. The irrevocability of previous decisions shall not prevent this recalculation.

(3) Where, in applying paragraph (2) of this Article, the agency has overpaid a benefit, the overpayment shall be regarded as an advance payment.

Article 14

If a person is entitled to a benefit under Austrian laws without the application of Article 10, and if such benefit would be greater than the total of the Austrian benefit calculated in accordance with subparagraph (1)(c) of Article 11 and the corresponding United States benefit, the competent Austrian agency shall pay, as the partial benefit, its benefit so calculated increased by the difference between such total and the benefit which would be payable if Austrian laws alone were applied.

Chapter 2

Benefits Under United States Laws

Article 15

(1) Where a person has sufficient periods of coverage under United States laws to satisfy the requirements for entitlement to benefits under United States laws, the United States agency shall determine the amount of the benefit according to the laws which it applies taking into account the periods of coverage completed only under United States laws.

(2) Where entitlement to a benefit under United States laws is established according to the provisions of Article 10, the United States agency shall compute a pro rata primary insurance amount in accordance with United States laws based on

(a) the person's average earnings credited exclusively under United States laws and

(b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws.

Benefits payable under United States laws shall be based on the ~~pro rata~~ primary insurance amount.

(3) In determining eligibility for benefits under Article 10, the United States agency shall credit one quarter of coverage for every 3 months of coverage certified as creditable by the Austrian competent agency to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed 4.

(4) Entitlement to a benefit under United States laws which results from Article 10 shall terminate with the acquisition of sufficient periods of coverage under United

States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of that Article.

(5) This Agreement shall not result in entitlement to a benefit under United States laws unless the person on whose record benefits are claimed has completed at least 6 quarters of coverage under those laws.

PART IV

MISCELLANEOUS PROVISIONS

Article 16

(1) The competent authorities of the two Contracting States shall make all joint administrative arrangements necessary for the application of this Agreement.

(2) The competent authorities of the two Contracting States shall communicate to each other, as soon as possible, information concerning the measures taken for the application of this Agreement and concerning all changes in their respective laws which may affect its application.

Article 17

Liaison agencies for the implementation of this Agreement shall be:

(a) for Austria, the Main Association of Austrian Social Insurance Agencies ("Hauptverband der oesterreichischen Sozialversicherungstraeger");

(b) for the United States, the Social Security Administration.

Article 18

(1) The competent authorities, liaison agencies and agencies of the Contracting States, within the scope of their respective authority, shall assist each other in applying this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.

(2) Where administration of this Agreement requires an agency of a Contracting State to seek a medical examination of a person in the territory of the other Contracting State, such examination shall, upon request of the competent agency of the first Contracting State and at its expense, be arranged by the agency of the other Contracting State in accordance with its rules.

(3) The statutes of a Contracting State concerning confidentiality shall apply to any information about an individual which is transmitted in accordance with this Agreement to that Contracting State by the other Contracting State.

Article 19

(1) The competent authorities, liaison agencies and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.

(2) An application or document may not be rejected by a competent authority, liaison agency or agency of a Contracting State solely because it is in the official language of the other Contracting State.

Article 20

(1) Where the laws of a Contracting State provide that any document which is submitted to the competent authority or an agency of that Contracting State shall be exempted,

wholly or partly, from taxes, fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the competent authority or an agency of the other Contracting State in accordance with its laws.

(2) Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 21

(1) Any claim, notice or written appeal which, under the laws of one Contracting State, must have been filed within a prescribed period with the agency of that Contracting State, but which is instead filed within the same period with the agency of the other Contracting State, shall be considered to have been filed on time.

(2) (a) Any claim for a benefit submitted under Austrian laws shall be considered to be a claim for the corresponding benefit under United States laws for which the applicant meets the entitlement requirements if he provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under United States laws; this shall not apply, however, when the applicant expressly requests that the determination of an old-age benefit under United States laws be deferred.

(b) If an applicant has filed a claim for a benefit with the United States agency and has not specifically restricted the claim to benefits under United States laws, the claim shall also be considered to be a claim for the corresponding benefit under Austrian laws if the applicant provides information at the time of

filing indicating that the person on whose record benefits are claimed has completed periods of coverage under Austrian laws.

Article 22

(1) Disagreements arising in connection with the application of this Agreement shall, as far as possible, be resolved by mutual agreement between the competent authorities of the Contracting States.

(2) If any such disagreement has not been resolved within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting States.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article 23

(1) This Agreement shall not establish entitlement to benefits for any period before its entry into force or a lump-sum death benefit if the person died before its entry into force.

(2) In determining entitlement to benefits under this Agreement, periods of coverage completed under the laws of a Contracting State prior to its entry into force shall be taken into account; however, neither Contracting State shall take into account periods of coverage occurring prior to the earliest date for which periods of coverage may be credited under its laws.

(3) (a) Subject to the provisions of paragraph (1), this Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force.

(b) In cases to which subparagraph (a) applies, a benefit under Austrian laws due only by virtue of this Agreement shall be determined, at the request of the beneficiary, in accordance with the provisions of this Agreement. If the claim for determination of such benefit is submitted within two years from the date of entry into force of this Agreement, the benefit shall be paid from that date; otherwise, the benefit shall be paid from the date determined under Austrian laws.

(4) The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

(5) Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

(6) This Agreement shall not result in any reduction in the amount of benefits to which entitlement was established prior to its entry into force.

Article 24

This Agreement shall not affect any existing rights under Austrian laws of any person who has suffered disadvantages in the field of social security because of political or religious reasons or by reason of ethnic origin.

Article 25

If a person becomes eligible for a benefit under Austrian laws without the application of Article 10 within a period of 5 years from the date of the entry into force of this Agreement, Chapter 1 of Part III shall not apply.

Article 26

This Agreement may be amended in the future by supplementary agreements, which from their entry into force shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

Article 27

(1) This Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

(2) This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one of the Contracting States to the other Contracting State.

(3) If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Vienna, Austria on July 13, 1990, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

Winchael J. Kalil

FOR THE GOVERNMENT OF
THE REPUBLIC OF AUSTRIA:

Erik Lauer

ADMINISTRATIVE ARRANGEMENT

FOR THE IMPLEMENTATION OF THE AGREEMENT

BETWEEN THE UNITED STATES OF AMERICA

AND THE REPUBLIC OF AUSTRIA

ON SOCIAL SECURITY

Pursuant to paragraph (1) of Article 16 of the Agreement between the United States of America and the Republic of Austria on Social Security of this date, hereinafter referred to as the "Agreement," the Competent Authorities:

for the United States of America,

the Secretary of Health and Human Services

for the Republic of Austria,

the Federal Minister for Labor and Social Affairs

have agreed as follows:

Chapter I

General Provisions

Article 1

The terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

Article 2

The liaison agencies designated in Article 17 of the Agreement shall agree upon joint procedures and forms necessary for the implementation of the Agreement and this Administrative Arrangement.

Chapter II

Provisions on Coverage

Article 3

(1) Where the laws of a Contracting State are applicable in accordance with any of the provisions of Articles 6 through 8 of the Agreement, the agency of that Contracting State, upon request of the employer or self-employed person, shall issue a certificate stating that the employee or self-employed person is subject to those laws. This certificate shall be evidence that the person concerned is exempt from the laws of the other Contracting State.

(2) The certificate referred to in paragraph (1) shall be issued

(a) in Austria: by the competent sickness insurance agency;

(b) in the United States: by the Social Security Administration.

(3) The agency of a Contracting State which issues a certificate referred to in paragraph (1) shall furnish a copy of the certificate to the liaison agency of the other Contracting State as agreed by the liaison agencies.

Chapter III

Provisions on Benefits

Article 4

(1) The agency of the Contracting State with which a claim for benefits is first filed in accordance with Article 21 of the Agreement shall inform the competent agency of the other Contracting State of this fact without delay, either directly or by way of the liaison agency of this other Contracting State, and provide such evidence and other information as may be required to complete action on the claim.

(2) The competent agency of a Contracting State which receives a claim that was first filed with an agency of the other Contracting State shall without delay provide the competent agency of this other Contracting State with such evidence and other available information as may be required for it to complete action on the claim.

(3) The competent agency of the Contracting State with which a claim for benefits has been filed shall verify the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

(4) The competent United States agency shall notify the competent Austrian agency, upon its request, of the benefits, if any, awarded to the applicant.

Chapter IV

Miscellaneous Provisions

Article 5

In accordance with measures to be agreed upon pursuant to Article 2 of this Administrative Arrangement, the competent agency of one Contracting State shall, upon request of the competent agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Article 6

The agency of a Contracting State which receives a claim, notice or written appeal referred to in Article 21 of the Agreement shall indicate the date of receipt on the document and forward the document without delay to the competent agency of the other Contracting State, either directly or by way of the liaison agency of this other Contracting State.

Article 7

The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a form to be agreed upon.

Article 8

(1) Where administrative assistance is requested under Article 18 of the Agreement, expenses other than regular personnel and operating costs of the agencies providing the assistance shall be reimbursed.

(2) Upon request, the agency of either Contracting State shall furnish without cost to the agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

(3) The agency of one Contracting State shall reimburse amounts owed under paragraph (1) of this Article upon presentation of a detailed statement of expenses by the agency of the other Contracting State.

Article 9

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE at Vienna, Austria on July 13, 1990, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE COMPETENT AUTHORITY OF THE UNITED STATES OF AMERICA:

Michael J. Wabick

FOR THE COMPETENT AUTHORITY OF THE REPUBLIC OF AUSTRIA:

ADMINISTRATIVE ARRANGEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY

ADMINISTRATIVE ARRANGEMENT

Pursuant to paragraph (1) of Article 16 of the Agreement between the United States of America and the Republic of Austria on Social Security of this date, hereinafter referred to as the "Agreement," the Competent Authorities:

for the United States of America,

the Secretary of Health and Human Services

for the Republic of Austria,

the Federal Minister for Labor and Social Affairs

have agreed as follows:

Chapter 1

General Provisions

Article 1

The terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

ANNOTATIONS AND COMMENTS

Article 1 provides that the terms used in both the Agreement and this Administrative Arrangement, whether defined in the Agreement or not, will have the same meaning as they have in the Agreement.

ADMINISTRATIVE ARRANGEMENT

ANNOTATIONS AND COMMENTS

Article 2

The liaison agencies designated in Article 17 of the Agreement shall agree upon joint procedures and forms necessary for the implementation of the Agreement and this Administrative Arrangement.

Article 2 authorizes and requires the liaison agencies of the United States and Austria to agree upon those procedures and forms which must be prepared jointly for the implementation of the Agreement and Administrative Arrangement.

Chapter II

Provisions on Coverage

Article 3

Article 3 establishes procedures pursuant to Part II of the Agreement for the elimination of dual social security coverage and taxation of the same work under the systems of both the United States and Austria.

(1) Where the laws of a Contracting State are applicable in accordance with any of the provisions of Articles 6 through 8 of the Agreement, the agency of that Contracting State, upon request of the employer or self-employed person, shall issue a certificate stating that the employee or self-employed person is subject to those laws. This certificate shall be evidence that the person concerned is exempt from the laws of the other Contracting State.

Under Article 3 (1), the agency of the country whose social security coverage laws will continue to apply to a person in accordance with the various rules in Part II of the Agreement will issue a certificate to that effect when requested to do so by a person's employer or a self-employed person. When presented to the appropriate agency of the other country, the certificate will establish the basis for the exemption of the person from the coverage laws of that country. Retroactive recovery of U.S. contributions paid with respect to services for which a coverage exemption has been in effect would be subject to the time limitations for refunds of taxes in the Internal Revenue Code.

ADMINISTRATIVE ARRANGEMENT

(2) The certificate referred to in paragraph (1) shall be issued

(a) in Austria: by the competent sickness insurance agency;

(b) in the United States: by the Social Security Administration.

(3) The agency of a Contracting State which issues a certificate referred to in paragraph (1) shall furnish a copy of the certificate to the liaison agency of the other Contracting State as agreed by the liaison agencies.

Chapter III

Provisions on Benefits

Article 4

(1) The agency of the Contracting State with which a claim for benefits is first filed in accordance with Article 21 of the Agreement shall inform the competent agency of the other Contracting State of this fact without delay, either directly or by way of the liaison agency of this other Contracting State, and provide such evidence and other information as may be required to complete action on the claim.

(2) The competent agency of a Contracting State which receives a claim that was first filed with an agency of the other Contracting State shall without delay provide the competent agency of this other Contracting State with such evidence and other available information as may be required for it to complete action on the claim.

ANNOTATIONS AND COMMENTS

Article 3 (2) designates the agencies responsible for issuing coverage certificates.

Article 3 (3) provides that an agency issuing a coverage certificate will furnish the liaison agency in the other country a copy of the certificate when needed.

Articles 4 (1) and 4 (2) outline the procedures to be followed by both countries for the exchange of pertinent information needed to process claims filed under the Agreement.

ADMINISTRATIVE ARRANGEMENT

(3) The competent agency of the Contracting State with which a claim for benefits has been filed shall verify the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

(4) The competent United States agency shall notify the competent Austrian agency, upon its request, of the benefits, if any, awarded to the applicant.

Chapter IV

Miscellaneous Provisions

Article 5

In accordance with measures to be agreed upon pursuant to Article 2 of this Administrative Arrangement, the competent agency of one Contracting State shall, upon request of the competent agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

ANNOTATIONS AND COMMENTS

Article 4 (3) deals with the verification of claims information. Both U.S. and Austrian laws require that certain information about individuals claiming benefits be verified (e.g., age and family relationship to the worker) before the claim can be approved. Article 4 (3) provides that when a claim for benefits under the Agreement is filed in one country, the agency of that country will verify the relevant information and inform the agency of the other country of its findings. The liaison agencies will agree upon the specific types of information which must be verified. The purpose of this provision is to expedite the claims process by avoiding the duplication of effort which would result if the agencies of both countries were required to verify the same information. Although an agency may accept the findings of the other agency concerning the accuracy of information, it may at its discretion request documentary evidence to support those findings.

Upon request, the U.S. agency will provide the Austrian agency with information concerning a person's entitlement to U.S. benefits.

Article 5 provides that the agency of one country may, upon request, furnish claims-related information to the agency of the other country in accordance with agreed upon procedures. Such procedures will be agreed upon by the liaison agencies and will be consistent with the governing statutes of both countries.

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ADMINISTRATIVE ARRANGEMENT

ANNOTATIONS AND COMMENTS

Article 6

The agency of a Contracting State which receives a claim, notice or written appeal referred to in Article 21 of the Agreement shall indicate the date of receipt on the document and forward the document without delay to the competent agency of the other Contracting State, either directly or by way of the liaison agency of this other Contracting State.

The agency with which a claim, notice or written appeal is filed under Article 21 of the Agreement shall transmit it without delay to the appropriate agency of the other country, indicating the date the document was received. This document may be sent either directly or through the liaison agency of the other country.

Article 7

The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a form to be agreed upon.

Article 7 provides for an exchange of statistics concerning the payments made to beneficiaries under the Agreement.

Article 8

In accordance with Article 18 of the Agreement, the agencies of the two countries will provide each other with such administrative assistance as may be necessary to implement the provisions of the Agreement. Article 8 of the Administrative Arrangement indicates the types of assistance that will be provided without cost and the types that will be provided on a reimbursable basis.

(1) Where administrative assistance is requested under Article 18 of the Agreement, expenses other than regular personnel and operating costs of the agencies providing the assistance shall be reimbursed.

Under Article 8 (1), expenses incurred in responding to requests for administrative assistance which require an agency to go outside its own organization to provide the assistance, such as hiring interpreters or conducting special field investigations, shall be paid by the requesting agency. Expenses for regular personnel and operating costs will not be reimbursed.

(2) Upon request, the agency of either Contracting State shall furnish without cost to the agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

When the agency in one country requests medical information from the other country's agency, the other agency will furnish the requesting agency any pertinent medical records it has in its possession free of charge. (See the annotation to Article 18 (2) of the Agreement regarding medical examinations requested by the agency of one country for persons located in the other country.)

ADMINISTRATIVE ARRANGEMENT

(3) The agency of one Contracting State shall reimburse amounts owed under paragraph (1) of this Article upon presentation of a detailed statement of expenses by the agency of the other Contracting State.

Article 9

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE at Vienna on July 13, 1990, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE COMPETENT AUTHORITY OF THE UNITED STATES OF AMERICA:

Michael J. Habib

FOR THE COMPETENT AUTHORITY OF THE REPUBLIC OF AUSTRIA:

Josef Schuh

ANNOTATIONS AND COMMENTS

In order to receive reimbursement for the cost of administrative assistance, the agency which provides the assistance must furnish the requesting agency with a detailed statement of expenses.

The Administrative Arrangement will enter into force on the same date as the Agreement and will remain in effect for the same period as the Agreement.

The administrative arrangement was signed in Vienna on July 13, 1990, by Mr. Michael J. Habib, Charge d'Affaires at the United States Embassy, and Dr. Joseph Schuh, a representative of the Austrian Ministry of Labor and Social Affairs.

REPORT TO CONGRESS
TO ACCOMPANY THE SOCIAL SECURITY AGREEMENT
BETWEEN THE UNITED STATES AND AUSTRIA

I. INTRODUCTION

The social security agreement between the United States and Austria is intended to provide limited coordination of the old-age, survivors, and disability insurance (OASDI) programs of the two countries. The agreement is similar in content and objective to agreements already in force between the United States and Belgium, Canada, the Federal Republic of Germany, France, Italy, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

The U.S.-Austrian agreement consists of two separate instruments: (1) a principal agreement setting forth the basic rules for coordinating the two countries' social security systems; and (2) an administrative arrangement establishing policies and procedures to implement the principal agreement. These two documents, which were signed by representatives of the U.S. and Austrian Governments on July 13, 1990, are now being submitted to Congress for review in accordance with section 233(e) of the Social Security Act.

The U.S.-Austrian agreement would eliminate dual social security coverage and taxation, the situation that now exists when a person from one country works in the other country and is covered under and required (along with the person's employer) to pay contributions to the social security systems of both countries for the same work. In addition to eliminating dual coverage, the agreement would help prevent situations where workers suffer a loss of benefit rights because they have divided their careers between the two countries.

Accompanying this report are paragraph-by-paragraph explanations of the provisions of the principal agreement (Annex A) and related administrative arrangement (Annex B). A report required by section 233(e)(1) of the Social Security Act on the effect of the agreement on income and expenditures of the U.S. Social Security program and the number of individuals affected by the agreement is also included (Annex C).

II. STATUTORY REQUIREMENTS

Section 233(c)(1) of the Social Security Act requires that international agreements concluded pursuant to that section provide for the elimination of dual coverage of the same work under the social security systems of the United States and the other country party to the agreement, and for combining credits earned by a worker under the two systems for benefit eligibility purposes. In addition, the law stipulates that when eligibility for U.S. Social Security benefits is established on the basis of combined credits, the amount of the benefit payable must be based on the proportion of the worker's periods of coverage completed under title II of the Social Security Act. The U.S.-Austrian agreement includes these required provisions.

III. COVERAGE PROVISIONS

In conformity with section 233(c)(1)(B) of the Social Security Act, Part II of the principal agreement sets forth rules designed to eliminate dual coverage and taxation of the same work under the U.S. and Austrian social security systems.

A. Rules Governing Employees

The rules which apply to employed persons provide that dual coverage under the laws of the United States and Austria would be eliminated generally by maintaining an employee's coverage under the system of the country where the work is performed and exempting the employee from compulsory coverage under the system of the other country.

Special rules would apply, however, for employees who are temporarily transferred by their employer in one country to work in the other country for a period of 5 years or less. In this situation, an employee who was covered in one country before his transfer would continue to be covered under that country's system and would be exempt from coverage in the other country. Thus, a person working in the United States who is temporarily transferred by his employer to Austria would only be covered under and pay contributions to the U.S. program, and he and his employer would be relieved of the additional burden of paying social security contributions to the Austrian program.

Other rules set forth in this Part would apply to persons employed by the Governments of the two countries and to persons employed in international air and ship transportation.

B. Rules Governing Self-Employed Persons

Part II also contains rules applicable to persons whose earnings from self-employment would be subject to compulsory coverage and contributions under the laws of both countries. Under these rules, a self-employed resident of Austria whose earnings would otherwise be dually covered will be covered only under the laws of Austria. A dually covered U.S. resident would be covered only under U.S. laws.

IV. BENEFIT PROVISIONS

Part III of the principal agreement establishes the basic rules for determining entitlement to and the amount of U.S. and Austrian benefits for persons who have worked in both countries. These benefit provisions are included pursuant to sections 233(c)(1)(A) and (C) of the Social Security Act.

A. Provisions Applicable to the United States

1. Totalization of Periods of Coverage

Under the rules which apply to the United States, if a worker has credit for at least 6 quarters of coverage under the U.S. Social Security program but not enough credits to qualify for a U.S. benefit, the worker's coverage credits from both countries could be totalized (i.e., combined) to permit him or her to qualify for a partial U.S. benefit. Since periods of coverage under the Austrian social security program are measured in terms of months, the United States would credit one quarter of coverage for every 3 months of Austrian coverage in a calendar year. The United States would not, however, credit months of coverage under Austrian law if they coincide with quarters of coverage already credited under the U.S. system.

2. Computation of U.S. Totalization Benefit Amounts

The amount of a U.S. benefit for which a person may qualify based on totalized periods of coverage depends on both the duration of the worker's coverage under U.S. Social Security and the level of his earnings. A detailed description of the totalization benefit computation procedure is contained in regulations of the Department of Health and Human Services (20 CFR 404.1918). The first step in the procedure is to compute a theoretical benefit amount as though the worker had worked a full coverage lifetime (i.e., a full career) under U.S. Social Security at the same earnings level as during his actual periods of U.S. covered work. The theoretical benefit is then prorated to reflect the proportion of a coverage lifetime the worker completed under the U.S. program. A coverage lifetime is defined in the regulations as the number of the worker's benefit computation years, i.e., the years which must be used in determining a worker's average earnings under the regular U.S. national computation method.

B. Provisions Applicable to Austria

1. Austrian Benefits

Austria provides old-age, survivors, and disability benefits through a comprehensive social insurance program. In order to qualify for benefits under the Austrian system, a worker must have completed minimum length-of-coverage and recency-of-work requirements that are specified for each type of benefit. Benefit amounts are based on the length of time the worker contributed to the Austrian system and his or her average covered earnings during the last 10 years immediately preceding retirement, death or disability.

2. Totalization of Periods of Coverage

The totalization provisions of the agreement apply to the Austrian social security laws

which govern the payment of retirement, survivors and disability benefits. Under the agreement, if a worker has at least 1 year of Austrian coverage, Austria will add U.S. quarters of coverage to periods of Austrian coverage in order to determine whether the worker meets the applicable benefit eligibility requirements. Austria will not give credit for U.S. coverage which coincides with periods that are already credited under Austrian law.

Where eligibility is established based on combined U.S. and Austrian credits, Austria would compute a theoretical benefit amount as if the worker's U.S. periods of coverage had been completed under Austrian law. To determine the amount actually payable, the theoretical amount would be prorated by multiplying it by the ratio of the periods of coverage credited under Austrian law to the total periods credited in both countries.

C. Benefit Portability

Section 233(c)(2) of the Social Security Act permits agreements to contain provisions suspending the application of the alien nonpayment provisions of the Social Security Act (section 202(t)) for persons residing in a foreign country with which the United States has an agreement in force.

Austrian nationals outside the United States, including those residing in Austria, are already exempt from the nonpayment provisions of section 202(t)(1) in accordance with section 202(t)(2). However, citizens of certain other countries who reside in Austria may not be exempt from these nonpayment provisions of the Social Security Act. The agreement, therefore, would provide an exemption from the nonpayment provisions of section 202(t)(1) for insured persons and their dependents or survivors, regardless of their citizenship, if they reside in Austria.

Under section 202(t)(11), benefits generally may not be paid to nonresident aliens who first become eligible for title II dependent or survivor benefits after 1984, unless they satisfy certain U.S. residency requirements. Citizens or residents of a country with which the

United States has an agreement in force pursuant to section 233 of the Social Security Act are exempt from the residence requirements. Once the U.S.-Austrian social security agreement enters into force, citizens or residents of Austria will no longer be subject to this nonpayment provision.

The agreement would also guarantee that U.S. residents who have been covered under the Austrian social security program, as well as their family members and survivors, could qualify for and receive Austrian benefits without regard to their nationality.

V. OTHER PROVISIONS

Section 233(c)(4) of the Social Security Act authorizes agreements to contain other provisions not inconsistent with title II of the Act which are appropriate to carry out the purposes of the agreements. In accordance with this provision, the principal agreement and administrative arrangement contain a number of articles designed to permit the United States and Austria to render free or reimbursable assistance to the other country in implementing the agreement.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY

AGREEMENT	ANNOTATIONS AND COMMENTS
The Government of the United States of America and the Government of the Republic of Austria, Being desirous of regulating the relationship between their two countries in the area of social security, Have agreed as follows:	This document is described as an "Agreement," with the understanding that it will enter into force for Austria as a formal treaty subject to parliamentary ratification and for the United States as an executive agreement under authority of section 233 of the Social Security Act. Upon entry into force, the Agreement will have the effect of law in both countries and will be binding on both countries.

PART I

GENERAL PROVISIONS

Article 1

(1) For the purposes of this Agreement,	Article 1 defines the key terms used in the Agreement.
(a) "Austria" means the Republic of Austria, and "United States" means the United States of America;	Article 1 (1)(a) permits abbreviated reference to the "United States of America" and the "Republic of Austria" in the Agreement.
(b) "territory" means, as regards Austria, its federal territory, and, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa;	Article 1 (1)(b) defines the territory of the United States and Austria for purposes of applying the agreement. The definition of United States territory is identical to the definition of the United States in section 210(i) of the Social Security Act.

AGREEMENT	ANNOTATIONS AND COMMENTS
(c) "national" means, as regards Austria, a citizen of Austria, and, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended;	Under section 101 of the Immigration and Nationality Act, "the term national of the United States means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." Those in category (B) include natives of American Samoa and certain inhabitants of the Northern Mariana Islands. An Austrian national means any person who is accorded nationality by Austria, including, but not limited to, a person who carries a valid Austrian passport or other valid identity document designating the person as an Austrian national.
(d) "laws" means, as regards Austria, the laws, regulations and statutory instruments which relate to the branches of social security specified in subparagraph (1)(a) of Article 2, and, as regards the United States, the laws and regulations specified in subparagraph (1)(b) of Article 2;	The term "laws", as used in the Agreement, refers to the social security laws and regulations of each country as specified in Article 2. With respect to Austria, the term "statutory instruments" refers to the regulations which are established by the institutions responsible for the administration of the Austrian social insurance system (see subparagraph (f)).
(e) "competent authority" means, as regards Austria, the Federal Minister responsible for the application of the laws specified in subparagraph (1)(a) of Article 2, and, as regards the United States, the Secretary of Health and Human Services;	"Competent authority", as used throughout this Agreement, refers to the Government official in each country with ultimate responsibility for administering the social security program, including the provisions of the Agreement. The current title of this official in Austria is the Federal Minister for Labor and Social Affairs (Bundesminister fuer Arbeit und Soziales).

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(f) "agency" means, as regards Austria, the institution responsible for the application of the Austrian laws, and, as regards the United States, the Social Security Administration;

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"Agency", as used in this Agreement, refers to the administrative body in each country responsible for taking and processing claims and making coverage determinations under each country's social security laws. The Social Security Administration (SSA) is the agency for the United States. However, the U.S. Internal Revenue Service's responsibility for determining Social Security tax liability in light of SSA coverage determinations under the Agreement is not affected.

In Austria, 28 independent statutory institutions are responsible for administering the Austrian social insurance program, which includes pensions insurance (old-age, survivors, and disability insurance), health insurance and workers' compensation. Six of the institutions are directly involved in the pensions insurance programs covered by the Agreement:

(1) the Pension Insurance Institute for Wage Earners;
(2) the Pension Insurance Institute for Salaried Employees;
(3) the Austrian Mining Industry Insurance Institute;
(4) the Austrian Railways Insurance Institute;
(5) the Social Insurance Institute for Trade, Commerce and Industry; and
(6) the Social Insurance Institute for Farmers.

Any one of these institutes may be the "agency" for purposes of administering the agreement, depending on which has jurisdiction in a particular case. However, an umbrella organization called the "Main Association of Austrian Social Insurance Agencies" is the Austrian liaison agency (see the annotation to Article 17) and will be the Social Security Administration's principal contact for purposes of implementing and administering the Agreement.

AGREEMENT	ANNOTATIONS AND COMMENTS
(g) "competent agency" means the agency responsible for applying the laws in a specific case;	The "competent agency" for each country is the agency which has responsibility for a specific case.
(h) "period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;	The term "period of coverage" means any period which is credited under the laws of either country for purposes of determining benefit eligibility, including periods of covered employment or self-employment and periods of voluntary contributions to the Austrian system.
(i) "benefit" means any cash benefit provided for in the laws of either Contracting State, including all components thereof provided out of public funds, all increments, readjustment sums, additional allowances and lump-sum payments;	The term "benefit" refers to old-age, survivors, and disability benefits provided under the social security laws of either country. With respect to the United States, the term also includes the lump-sum death payment under section 202(i) of the Social Security Act, but excludes special age-72 payments provided for certain uninsured persons under section 228 of the Social Security Act.
(j) "refugee" means a person defined as a refugee in Article 1 of the Convention relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967;	The Convention relating to the Status of Refugees, in conjunction with the 1967 Protocol thereto, defines "refugee" as any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."
(k) "stateless person" means a person defined as a stateless person in Article 1 of the Convention relating to the Status of Stateless Persons dated September 28, 1954.	The Convention relating to the Status of Stateless Persons defines a "stateless person" as "a person who is not considered as a national by any State under the operation of its law."

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(2) Any other expression used in this Agreement shall have the meaning assigned to it in the laws being applied.

Article 2

(1) This Agreement shall apply:

(a) as regards Austria,

(i) to the laws concerning pensions insurance, with the exception of the special insurance for notaries;

and, with regard to Part II only,

(ii) to the laws concerning sickness insurance and accident insurance;

ANNOTATIONS AND COMMENTS

Each country shall assign to any undefined terms used in the Agreement the same meaning as they are given under its national laws.

Article 2 (1) specifies the laws to which the Agreement applies.

The Austrian social security system is established under several separate laws. The most important in terms of the number of persons covered is the General Social Insurance Act (Allgemeines Sozialversicherungsgesetz, or ASVG) which applies to virtually all wage earners and salaried employees in Austria, with the exception of some categories of civil servants, and to self-employed persons in certain occupations. Most self-employed persons, however, are covered under the Social Insurance Act for the Self-employed in Trade, Commerce and Industry. Self-employed farmers are covered under the Social Insurance Act for Farmers. The agreement applies to all these statutory programs but not to the one applicable to notaries, which Austria has excluded from the scope of all its social security agreements.

The Austrian social security system provides a wide range of benefits, including old-age, death, disability, sickness, accident, and unemployment benefits, as well as children's allowances. The agreement generally applies only to the provisions of Austrian laws relating to old-age, survivors, and disability insurance, but the coverage provisions of the Agreement apply to Austrian sickness and accident insurance as well. As a result, a worker who is exempt from Austrian social security laws by virtue of Part II of the Agreement will be exempt, together with his employer, from paying Austrian social security contributions for old-age, survivors, and disability insurance, as well as sickness and accident insurance. A worker who is subject only to Austrian laws by virtue of the Agreement will be exempt only from contributions required under U.S. law by the Federal Insurance Contributions Act and the Self-Employment Contributions Act.

AGREEMENT

(b) as regards the United States, to the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections, and

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters.

(2) This Agreement shall also apply to any laws which amend or supplement the laws specified in paragraph 1 of this Article.

(3) Unless otherwise provided in this Agreement, laws within the meaning of paragraph (1) of this Article shall not include treaties or other international agreements concluded between one Contracting State and a third state, except insofar as they contain provisions relating to the apportionment of insurance burdens.

ANNOTATIONS AND COMMENTS

For the United States, the Agreement applies to title II of the U.S. Social Security Act and the corresponding tax laws (the Federal Insurance Contributions Act and the Self-Employment Contributions Act of 1954) and any regulations pertaining to those laws. However, the Agreement does not apply to Medicare provisions (sections 226 and 226A of the Social Security Act) or provisions for special benefits for uninsured persons aged 72 and older under section 228 of the Social Security Act. Persons to whom the Agreement applies who qualify independently for Medicare hospital insurance or age-72 payments will be entitled to receive such benefits.

The Agreement will automatically apply to any future laws that modify the laws set forth in paragraph 1.

The laws to which the Agreement applies do not include treaties and other international agreements--for example, either country's bilateral social security agreements with third countries or multilateral agreements. The purpose of this provision is to ensure that in cases where a person has periods of coverage in the United States and Austria and periods of coverage in a third country with which the United States or Austria has a social security agreement, periods from all three countries may not be combined to meet U.S. or Austrian benefit eligibility requirements.

The Agreement, however, would take into account any provision of Austrian treaties "relating to the apportionment of insurance burdens." These provisions are contained in certain bilateral treaties now in force between Austria and the Federal Republic of Germany and Yugoslavia regarding the sharing of pension liabilities resulting from periods of coverage prior to, during and just after World War II. Under the Austrian-Yugoslav

AGREEMENT

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convention, for example, a person who lived in Austria as an Austrian citizen on January 1, 1956, and who completed periods of coverage in Yugoslavia prior to that date has those periods counted under Austrian rather than Yugoslav laws. A person who lived in Yugoslavia as a Yugoslav citizen on January 1, 1956, and who had periods of coverage in Austria prior to that date has those periods counted under Yugoslav rather than Austrian law. Under Article 2(3) of the Agreement, if periods completed in Yugoslavia are now taken into account under Austrian laws in accordance with the Austrian-Yugoslav convention, these periods will also be considered Austrian periods of coverage in applying the U.S.-Austrian agreement. On the other hand, periods completed in Austria that are now taken into account under Yugoslav law will not be considered Austrian periods under the U.S.-Austrian agreement. A similar provision is contained in the U.S.-German social security agreement, since the Federal Republic of Germany also has entered into treaties that include provisions on the apportionment of insurance burdens.

Article 3

This Agreement shall apply to:

(a) persons who are or have been subject to the laws of one or both Contracting States;

(b) other persons with respect to the rights they derive from the persons mentioned in subparagraph (a).

Article 3 specifies the categories of persons to whom the Agreement applies. These include persons currently working in covered employment or self-employment, as well as persons who have been credited with periods of coverage under the system of either country in the past. The Agreement also applies to other persons who derive rights from such persons.

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ANNOTATIONS AND COMMENTS

Article 4

(1) Unless otherwise provided in this Agreement, nationals of one Contracting State who are or have been subject to the laws of that Contracting State and who reside in the territory of the other Contracting State shall, together with other persons who derive rights from the foregoing, receive equal treatment regarding eligibility for and payment of benefits with the nationals of the other Contracting State.

Under Article 4 (1), if a national of the United States or Austria is or has been subject to the social security laws of that country, and the person resides in the other country, the country in which the person resides will accord him or her the same treatment regarding social security benefit rights as it accords its own nationals. This provision is not intended to affect the coverage provisions of either country's laws, since these are dealt with specifically in Part II of the Agreement.

(2) With regard to provisions of Austrian laws concerning the crediting of periods of war service and periods considered as such, United States nationals shall receive equal treatment with Austrian nationals provided they had Austrian nationality immediately before March 13, 1938.

Austrian social security law provides noncontributory coverage credit for certain periods of wartime service in the armed forces, as well as periods spent in captivity as a prisoner of war or civilian internee and periods spent returning from such captivity. The law generally allows this credit, however, only if a person is an Austrian citizen on the date he or she becomes entitled to benefits and the person completed at least one month of coverage under the Austrian system at some point in his or her life. Under Article 4 (2), persons with at least one month of Austrian coverage who are now U.S. nationals, but who were Austrian nationals immediately prior to March 13, 1938 (the date of Austria's annexation by Germany), will be able to receive these Austrian war-related credits.

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(3) Provisions relating to the apportionment of insurance burdens that may be contained in international treaties shall not be affected.

Article 5

(1) Unless otherwise provided in this Agreement, any provision of the laws of a Contracting State under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Contracting State shall not be applicable to nationals of a Contracting State, refugees or stateless persons, or other persons who derive rights from the foregoing, who reside in the territory of the other Contracting State.

ANNOTATIONS AND COMMENTS

Austria will not be required to provide equal treatment for non-Austrian nationals in applying the Austrian treaties with the Federal Republic of Germany and Yugoslavia concerning the sharing of pension liabilities resulting from periods of coverage prior to, during and just after World War II. (See the annotation to Article 2 (3)). Taking the convention with Yugoslavia as an example, Austria will not be required to give credit to a person for periods of work in Yugoslavia prior to January 1, 1956, if the person was a U.S. citizen rather than an Austrian citizen on that date.

Article 5 (1) provides that where the laws of either country require that a person be resident or present in that country in order to qualify for or receive social security benefits, the person may also qualify for and receive those benefits during periods of residence in the other country, provided that he or she is a U.S. or Austrian national, refugee or stateless person, or a person who derives rights from such persons.

Since U.S. law already permits payment of benefits to U.S. and Austrian nationals who reside in either country, the primary effect of Article 5 (1) on U.S. law is to permit the United States to pay certain third country nationals who would otherwise be subject to the alien nonpayment provisions of section 202(t) of the U.S. Social Security Act during periods of residence in Austria.

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In addition to the U.S. benefit portability guarantee provided for Austrian residents in Article 5 (1), the entry into force of the Agreement will also liberalize a restriction on exportation of U.S. dependents and survivors benefits that now applies to Austrian citizens and residents. Under U.S. law, social security dependents and survivors benefits may not be paid to aliens who first become eligible after 1984 and who are outside the United States for more than 6 months unless they satisfy certain U.S. residency requirements or they are citizens or residents of a country with which the United States has an international social security agreement in force. Once this Agreement enters into force, citizens and residents of Austria will no longer be subject to this nonpayment provision.

(2) As regards Austrian laws, paragraph (1) of this Article shall not apply to:

(a) the compensatory supplement ("Ausgleichszulage") and

The "compensatory supplement" under Austrian laws is an assistance payment for Austrian residents with little or no other income. Austria will not be required to pay this supplement to residents of the United States.

(b) those parts of the Austrian pension which are based on

(i) periods of coverage under the provisions of the Austrian Federal Act of November 22, 1961, concerning entitlement to benefits and rights in course of acquisition in the field of pensions insurance for gainful occupation outside Austria or

(ii) periods of self-employment completed outside the territory of Austria, but within the territory of the former Austro-Hungarian Monarchy.

Under the Austrian Federal Act of November 22, 1961, Austrian and German citizens, as well as persons of German ethnic origin (Volksdeutsche) who were permanently resident in Austria on either July 11, 1953, January 1, 1961, or November 27, 1961, may receive noncontributory coverage credit for periods of prior employment in Estonia, Latvia, Lithuania, the Soviet Union, Poland, Czechoslovakia, Hungary, Romania, Bulgaria, Yugoslavia, Albania, the former German Reich or the former territory of Danzig. In addition, an Austrian citizen or person of German ethnic origin who resided permanently in Austria on July 11, 1953, and on the date a benefit is claimed may receive credit for periods of self-employment in territory of the former Austro-Hungarian Monarchy that is outside current Austrian borders. Under the U.S.-Austrian agreement, Austria will not be required to pay benefits to people who reside outside Austria to the extent that the benefits are based on these noncontributory coverage credits.

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PART II

PROVISIONS ON COVERAGE

Article 6

Unless otherwise provided in Articles 7 through 9, persons who are employed or self-employed within the territory of one of the Contracting States shall, with respect to that work, be subject to the laws of only that Contracting State even when the place of residence of the person concerned or the principal place of business of the employer is located in the territory of the other Contracting State.

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Part II is intended to eliminate dual coverage, i.e., situations where a worker is covered under the laws of both countries with respect to the same services. In so doing, the existing coverage provisions of the laws of both countries are preserved to the greatest extent possible. The provisions in this Part are intended to eliminate dual coverage by continuing the worker's social security coverage and taxation under the system of the country to whose economy he or she has the more direct connection and exempting the worker from coverage and taxation under the other country's system.

Article 6 establishes a general rule for eliminating dual social security coverage and contributions. Article 7 (1) contains an exception to this general rule which would apply in the case of employees sent by an employer in one country to work temporarily in the other country. Article 7 (2) provides another exception that is applicable to self-employed persons who would otherwise be covered by the systems of both countries. Articles 7 (3) and 7 (4) regulate the coverage of persons engaged in international air or ship transportation, and Article 8 establishes rules applicable to persons employed in U.S. or Austrian Government service. Article 8(5) includes a special rule applicable to employment with the American International School in Austria.

Article 6 establishes a territoriality rule which stipulates that a person who performs employment or self-employment in a country will be compulsorily covered by only that country. Thus, as a general rule, an employee who is working permanently in one country but who is covered under the laws of both countries will remain covered under the system of the country where the work is performed and will be exempt from

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coverage under the system of the other country. For example, under existing law, a U.S. citizen employed on a permanent basis in Austria by an American employer is generally covered under both the U.S. and Austrian social security programs. Under Article 6, however, the person would remain covered only under the Austrian program. Article 6 should have only limited impact on the coverage of self-employed persons since self-employed persons who are covered under both the U.S. and Austrian programs will have their coverage determined according to the residence rule in Article 7(2).

Article 7

(1) If a person in the service of an employer having a place of business in the territory of one Contracting State is sent by that employer to the territory of the other Contracting State for a temporary period, the person shall be subject to the laws of only the first Contracting State as if the person were employed in its territory, provided that the employment in the territory of the other Contracting State is not expected to exceed five years.

Under Article 7 (1), an employee working for an employer located in the United States or Austria who is temporarily transferred to work in the other country for the same employer (or, under certain conditions, a foreign affiliate of that employer) will continue to be covered by the social security system of the country from which the employee has been transferred. This rule will apply only if the transfer is expected to last 5 years or less. The provisions of this paragraph will apply even if an employee has not been sent directly from one country to the other but is first assigned to work in a third country.

For purposes of measuring the length of a transfer in the case of workers who were sent from one country to the other before the Agreement entered into force, any period of work before the Agreement's entry into force will be disregarded.

(2) A person who would otherwise be compulsorily covered under the laws of both Contracting States with respect to self-employment and who is a resident of one Contracting State shall be subject to the laws of only the Contracting State of which the person is a resident.

Under the general territoriality rule of Article 6, a person's self-employment will be subject to the laws of only the country in which it is performed. Under Article 7 (2), however, if a person's self-employment income would otherwise be compulsorily covered by both countries, it will remain covered

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only by the country in which the person resides. Thus, a self-employed Austrian resident whose earnings would otherwise be covered by both Austria and the United States will be covered only under the laws of Austria. A dually covered U.S. resident will be covered only under U.S. laws. This provision will primarily affect self-employed U.S. citizens who work and reside in Austria. In the absence of an agreement, such persons would be covered under Austrian law because their self-employment activity takes place in Austria and would also be covered under U.S. law because they are U.S. citizens.

(3) (a) If a person is employed as an officer or member of a crew on an aircraft and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the Contracting State in whose territory the employer is headquartered.

(b) When an Austrian national is sent to perform services in the United States for an Austrian air transport organization, paragraph (1) of this Article shall be applied without reference to the 5-year time limit.

Under Article 7.3, a person employed on an aircraft who would otherwise be covered under the laws of both the United States and Austria will be covered only under the laws of the country in which the employer is headquartered. Austrian ground personnel sent by an Austrian air transport organization to the United States will be covered only under Austrian laws, regardless of the length of their transfer.

(4) If a person is employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the Contracting State whose flag the vessel flies. For purposes of the preceding sentence, a vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

Under Article 7 (4), a person employed on a U.S. or Austrian ship who is covered under the laws of both countries will be covered only under the laws of the country whose flag the ship flies. A ship is considered to fly the flag of the United States if it is an American vessel as defined in section 210 (c) of the Social Security Act. Under that definition, an American vessel is one that is documented or numbered under U.S. law or one that is not documented or numbered under the law of any country if its crew is employed solely by one or more U.S. citizens or residents, or corporations organized under Federal or State law.

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Article 8

(1) This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

Articles 8 (1) and 8 (2) provide coverage rules applicable to employees of the U.S. and Austrian Governments. Article 8 (1) is intended to make clear that, in general, the categories of persons mentioned in the Vienna Conventions on diplomatic and consular relations will not be affected by the coverage provisions of the Agreement. The Conventions, to which both the United States and Austria are parties, apply to members of the staff of a diplomatic or consular mission, including the diplomatic, consular, administrative and technical staffs; dependents of members of those staffs; the domestic service staff of the mission; and private servants employed by members of such missions.

In general, the Vienna Conventions exempt such persons from social security coverage and contributions under the laws of the host country unless specific arrangements have been made to waive their immunity from taxation. Persons whose immunity has been waived would be subject to the laws of the host country, including the coverage provisions of this Agreement.

(2) Notwithstanding Article 6, nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State, but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in paragraph (1), shall be subject to the laws of only the first Contracting State.

Article 8 (2) provides that if a U.S. or Austrian national is employed by his Government in the other country but is not exempt from host country coverage by virtue of the Vienna Conventions (for example, because the person is not employed in a diplomatic or consular mission), the person will be subject only to the laws of his own country.

(3) Paragraph (2) of this Article shall apply as appropriate to the Representative of the Austrian Trade Commission and to the Representative's assistants, and to persons employed by the Austrian National Tourist Office in the United States.

The U.S. Representative of the Austrian Trade Commission and his staff, along with persons working for the Austrian National Tourist Office in the United States, will be treated as if they were Austrian Government employees for purposes of Article 8 (2) and will be subject only to Austrian coverage.

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(4) Paragraph (2) of this Article shall apply to employees of the Federal Government of the United States or any of its instrumentalities.	Article 8 (2) applies not only to U.S. Government employees, but also to persons working for a U.S. instrumentality.
(5) A person employed by the American International School in Austria shall be exempt from Austrian laws if he is a United States national, or a national of a State other than a Contracting State who does not reside in Austria.	U.S. citizens, as well as third country nationals who are not Austrian residents, who work for the American International School in Austria will be exempt from Austrian social security coverage. This provision continues an exemption from Austrian coverage and contributions that has applied for a number of years.
Article 9	
(1) At the request of an employed person and his employer or a self-employed person, the competent authorities of the two Contracting States may provide, by mutual agreement, for exceptions to Articles 6 through 8 of this Agreement, taking into account the nature and circumstances of the work.	Under Article 9, either country may grant an exception to the coverage rules of the Agreement, provided that the other country concurs. The exemption must be requested by both the employee and his employer, or by a self-employed person. This provision is designed to permit the competent authorities to correct anomolous situations that arise to the disadvantage of workers or to eliminate dual coverage in unforeseen circumstances.
(2) Where, in accordance with paragraph (1) of this Article, a person is subject to Austrian laws, those laws shall apply to him as if he were employed in the territory of Austria.	

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PART III

PROVISIONS CONCERNING BENEFITS

Article 10

(1) Except as otherwise provided in this Agreement, if a person has completed periods of coverage under the laws of both Contracting States, these periods, insofar as they do not coincide, shall be added together for the purpose of establishing entitlement to a benefit.

(2) When it is not possible to determine the time when specific periods of coverage were completed under the laws of one of the Contracting States, it shall be presumed that such periods do not coincide with periods of coverage completed under the laws of the other Contracting State.

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Part III establishes the basic rules for determining entitlement to social security benefits when an individual has worked in both the United States and Austria, and the rules for determining benefit amounts when entitlement is based on combined work credits. Chapter 1 contains rules specifically applicable to the Austrian system, and Chapter 2 deals with the U.S. system.

Article 10 establishes the principle that a worker's social security credits in both countries will be totalized, or combined, to establish entitlement to U.S. or Austrian social security benefits. This principle is elaborated in the subsequent provisions of Part III.

Article 10(1) stipulates that, in determining a person's eligibility for benefits, neither country will count periods of coverage under the other country's laws that coincide with coverage already credited under its own laws. Since it is not always possible to determine exactly when certain periods of coverage under the U.S. and Austrian systems were earned, a problem could arise. For example, beginning in 1978, the method of crediting quarters of coverage under the U.S. system changed from a quarterly to an annual method. Before 1978, a worker was credited with one quarter of coverage for every calendar quarter in which he was paid at least $50 in covered wages, while now a worker earns up to 4 quarters of coverage in a year based on the amount of his annual earnings. Thus, for years after 1977, the U.S. earnings record does not indicate the calendar quarters in which quarters of coverage were actually earned. Under Article 10(2), the Austrian agency will presume that quarters of coverage certified by the Social Security Administration do not overlap with periods of coverage under the Austrian system in those situations where the coverage cannot be assigned to specific periods of time. As a result, the periods will be credited in full.

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Chapter I

Benefits Under Austrian Laws

The benefit provisions in Chapter I pertain to retirement, survivors, and disability benefits under the Austrian social security system. Austrian retirement benefits are payable to men at age 65 and to women at age 60 if the worker is credited with at least 180 months of coverage. Benefits may be paid to men as early as age 60 and to women as early as age 55 if the worker has at least 35 years of coverage and at least 24 months of compulsory contributions within the 36 months prior to entitlement.

The monthly amount of the Austrian retirement benefit equals 1.9 percent of the worker's average monthly covered earnings for each year of coverage up to the thirtieth year, plus 1.5 percent of average earnings for each year from the thirty-first to forty-fifth year. The term "average monthly earnings" for this purpose means the worker's average monthly covered earnings during the 10 years of coverage immediately preceding retirement at age 65 (age 60 for women), death or disability onset. The law stipulates a longer averaging period of up to 15 years for persons who retire early or become disabled between the ages of 50 and 65.

A child's supplement equal to 5 percent of average monthly earnings is payable to a retirement beneficiary for each child under age 18. No spouse's benefit is payable.

Survivors benefits may be paid if the deceased worker was eligible for a retirement or disability benefit at the time of death or met one of two alternative coverage requirements--180 months of contributions or a recency-of-coverage test which varies depending on the age at which the worker died. A surviving spouse may receive survivors benefits if he or she is age 35 or older when the worker dies, was married to the worker at least 10 years, or had a child born during the

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marriage, or the worker's death was caused by an accident or occupational disease. A surviving spouse's benefit equals 60 percent of the disability benefit that was paid to the deceased worker or which would have been paid to the deceased if he or she had become disabled at the time of death.

A surviving child can qualify for benefits if the child is under age 18 (26 if a student; no age limit if disabled). A surviving child who has lost one parent is entitled to receive 40 percent of a surviving spouse's benefit; if the child has lost both parents, the child can receive 60 percent. The maximum amount of survivors benefits, including surviving spouse's and orphan's benefits, is 110 percent of the worker's benefit.

Disability benefits may be paid to a worker who has lost at least 50 percent of his working capacity. To qualify for disability benefits, a person must meet the same coverage requirements that a deceased worker must meet for his survivors to qualify for survivors benefits. The amount of the disability benefit is calculated in the same manner as the retirement benefit, except that, for workers who become disabled before age 50, the benefit is increased by a supplement equal to 1.9 percent of average monthly earnings for each year from disability onset until age 50. A disability beneficiary may qualify for the same child's supplement as a retirement beneficiary.

Austrian residents whose benefits and other income do not exceed specified limits can receive a "compensatory supplement." Beneficiaries who are helpless and require constant care and attention are eligible for a special helpless person's allowance.

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Article 11

(1) When a person who has completed periods of coverage under the laws of both Contracting States, or the survivor of such a person, claims a benefit, the competent Austrian agency shall determine the amount of the benefit in the following manner:

Article 11 (1) establishes the basic rules which the Austrian agency will apply in determining eligibility for and the amount of benefits under the Austrian system when a person is credited with periods of coverage under both the U.S. and Austrian Social Security systems.

(a) The agency shall determine, in accordance with Austrian laws, whether the claimant is entitled to a benefit by adding together the periods of coverage, as provided in Article 10.

Article 11 (1)(a) provides that the Austrian agency will add U.S. quarters of coverage to periods of Austrian coverage in determining whether the person meets the various minimum coverage and recency-of-coverage requirements for benefit eligibility under Austrian law. Under Article 10 (1), Austria will not credit additional months of contributions based on U.S. coverage if those months are already credited under Austrian laws.

(b) If the claimant is entitled to a benefit, the agency shall first calculate the theoretical amount of the benefit which would be payable if all the periods of coverage completed under the laws of both Contracting States had been completed exclusively under Austrian laws; in cases where the amount of the benefit is independent of the duration of the periods of coverage, this amount shall be taken to be the theoretical amount.

Articles 11 (1)(b) and (c) establish the rules to be applied by the Austrian agency in determining benefit amounts when a person is credited with periods of coverage under both the U.S. and Austrian systems. In this case, the Austrian agency, in accordance with Article 11 (1)(b), will first compute a theoretical benefit amount as if the worker's U.S. periods of coverage had been completed under Austrian law. For example, in the case of an Austrian retirement benefit, U.S. periods will be added to Austrian periods to determine the percentage of average earnings that theoretically would be payable as a retirement benefit. (Under Article 12 (4)(b), however, the Austrian agency will only consider earnings covered under the Austrian system in determining the average earnings on which the theoretical benefit amount is based.) If the amount of a particular Austrian benefit is independent of the duration of the worker's periods of coverage, that amount will be considered to be the theoretical amount. Currently, only the Austrian child's supplement--equal to a flat 5 percent of average monthly earnings--is independent of the worker's length of coverage.

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(c) The agency shall then calculate the partial benefit to be paid based on the amount calculated under subparagraph (b) in proportion to the ratio between the duration of the periods of coverage to be taken into consideration under Austrian laws and the total duration of the periods of coverage to be taken into consideration under the laws of both Contracting States.

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Under Article 11 (1)(c), the Austrian agency will compute the amount of the benefit it will actually pay by prorating the theoretical amount determined under Article 11 (1)(b). The pro rata benefit will be computed by multiplying the theoretical amount by the ratio of the periods of coverage under Austrian laws to the total periods in both countries.

It should be noted that the provisions of Articles 11(1)(b) and (c) for payment of prorated Austrian benefits will generally apply whenever a person has completed periods of coverage in both the United States and Austria--even if the person meets the coverage requirements for Austrian benefit eligibility based solely on Austrian periods of coverage. For example, if a male worker has 15 years of Austrian coverage and 30 years of U.S. coverage, the worker could qualify under Austrian domestic law for a retirement benefit at age 65 equal to 28.5 percent of his average monthly covered earnings:

$$15 \text{ years} \times 1.9\% \text{ per year} = 28.5\%$$

Under the agreement, he will qualify instead for 26.5 percent of average monthly covered earnings:

$$((30 \text{ years} \times 1.9\%/\text{year}) + (15 \text{ years} \times 1.5\%/\text{year})) \times \frac{15}{45} = 26.5\%$$

The Austrian side explained during the course of negotiations that the method of calculating benefits under Austrian law necessitates the application of the procedure in Article 11 (1) for computing theoretical and pro rata benefit amounts even when a person qualifies for Austrian benefits independently of the agreement. Under the computation method in Austrian law, workers with less than 30 years of coverage receive a proportionately greater return on their contributions than

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workers with longer periods of coverage. The Austrians believe a worker should not receive this advantage if he or she actually worked a full career but divided it between Austria and its agreement partner. Consequently, Austria has included provisions similar to Article 11 in all its social security agreements.

The Agreement includes four other provisions, however, that stipulate conditions under which a person with U.S. and Austrian coverage who qualifies for Austrian benefits independently of the Agreement may nevertheless receive the Austrian domestic law benefit rather than a prorated benefit based on combined U.S. and Austrian coverage:

(1) If the person is not entitled to a corresponding U.S. benefit (Article 13 (1)).

(2) If the person was already receiving an Austrian benefit at the time the Agreement becomes effective (Article 23 (6)).

(3) If the person suffered political, ethnic, or religious persecution (Article 24)).

(4) If the person becomes eligible for the Austrian benefit within 3 years after the Agreement enters into force (Article 25).

In addition, under Article 14, Austria guarantees that the benefit it pays, when added to any U.S. benefit that is payable, will always equal at least the benefit amount for which the beneficiary would have qualified under Austrian domestic law.

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(2) Where the periods of coverage to be taken into consideration under Austrian laws for the purpose of calculating the amount of a benefit are in aggregate less than 12 months, no benefit under those laws shall be paid. However, the preceding sentence shall not apply if entitlement to that benefit has been established under Austrian laws exclusively on the basis of periods of coverage completed under those laws.

Article 12

The competent Austrian agency shall apply Articles 10 and 11 according to the following rules:

(1) In determining the agency responsible for paying a benefit, only periods of coverage under Austrian laws shall be taken into consideration.

(2) Articles 10 and 11 shall not apply to eligibility requirements for or payment of the miners' long service allowance ("Bergmannstreuegeld") under miners' pensions insurance.

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Under Article 11 (2), the Austrian agency will not take U.S. periods of coverage into account under the Agreement if the worker has fewer than 12 months of Austrian coverage. Like the similar 6-quarter-of-coverage requirement for totalization by the United States under Article 15 (5), this provision is intended to avoid the considerable administrative burden that would result from processing claims for very small benefits based on minimal periods of coverage.

Article 12 (1) ensures that the rules for determining which Austrian agency is responsible for paying a benefit will remain unchanged. Under Austrian law, if a worker has covered employment under more than one Austrian social security system, his benefit will be paid only by the system under which most of his coverage within the past 15 years was completed. That system, however, must take into account the coverage completed under any other system as if it had all been completed under the paying system.

Under Article 12 (2), a worker who becomes eligible for a benefit under the Austrian miners' pensions insurance program based on combined U.S. and Austrian coverage (see Article 12 (9)) will not be eligible to receive a "miners' long service allowance." This allowance, which is noncontributory, is paid only to persons who are eligible for a retirement, survivors, or disability benefit under the miner's program. The long service allowance is a lump sum paid to a worker and his survivors if the worker has been employed in underground mining activity for at least one year. The allowance is proportional to the amount of underground mining work that has been completed.

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(3) For the application of Article 10 and paragraph (1) of Article 11, a quarter of coverage under United States laws shall be treated as 3 months of coverage under Austrian laws.	The Austrian agency will credit 3 months of coverage for each quarter of coverage certified by the Social Security Administration. (Article 15 (3) provides a corresponding rule for converting Austrian months of coverage into U.S. quarters of coverage when determining U.S. benefit eligibility.)
(4) For the application of paragraph (1) of Article 11, the following shall apply:	
(a) periods during which the insured person was entitled to a retirement or disability benefit under United States laws shall be treated as if they were neutral periods ("neutrale Zeiten");	To qualify for some types of Austrian benefits, a worker must have a certain amount of coverage within a specified period of time, i.e., meet a recent coverage test. The period during which the coverage must have been earned is extended for certain periods, known as "neutral periods." Neutral periods include periods during which the worker received Austrian disability, unemployment or other specified kinds of benefits, as well as other periods stipulated by law. Article 12 (4)(a) provides that periods during which the worker was entitled to a U.S. retirement or disability benefit will also be treated as neutral periods.
(b) the basis of assessment ("Bemessungsgrundlage") shall be determined by taking into account periods of coverage only under Austrian laws;	Austrian social security benefits are related to the worker's average earnings. The average earnings amount is referred to in Austrian law as the "basis of assessment." Under Article 12 (4)(b), in determining the basis of assessment for persons who qualify for Austrian totalization benefits, the Austrian agency will consider only earnings credited under the Austrian social security system.
(c) contributions for supplementary insurance ("Hoeherversicherung"), the miners' supplementary benefit ("knappschaftlicher Leistungszuschlag"), the helpless person's allowance ("Hilflosenzuschuss") and the compensatory supplement shall be disregarded.	Article 12 (4)(c) provides that, in computing pro rata benefit amounts under Article 11 (1), each of the four specified benefit supplements will be disregarded. These supplements will generally not be prorated under Article 11 (1)(c). (Article 12 (7) provides an exception, however, under which the helpless person's allowance will be prorated when eligibility is established only by totalizing U.S. and Austrian periods of coverage.) "Contributions for supplementary insurance" are

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(5) For the application of subparagraphs (1)(b) and (c) of Article 11, periods of coverage shall be taken into consideration even if they coincide.

(6) If, for the application of subparagraph (1)(c) of Article 11, the total duration of the periods of coverage to be taken into consideration under the laws of both Contracting States exceeds the maximum number of months of coverage specified under Austrian laws for the calculation of the rate of increments, the partial pension payable shall be calculated in proportion to the ratio between the duration of the periods of coverage to be taken into consideration under Austrian laws and the maximum number of months of coverage referred to above.

(7) For the calculation of the helpless person's allowance, subparagraphs (1)(b) and (c) of Article 11 shall apply; Article 14 shall apply as appropriate.

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contributions that a worker may elect to pay, in addition to compulsory contributions, in order to increase the amount of the benefit that he or she will receive. The "miners' supplementary benefit" is paid to a worker who is eligible for a miners' retirement benefit but who continues to work and acquire contribution periods. The "helpless person's allowance" is paid to a beneficiary who requires the constant attendance and assistance of another person. The "compensatory supplement," which is paid only to Austrian residents, is a means-tested benefit paid to persons with limited income.

Article 12 (5) provides that, in computing both the theoretical benefit amount and the pro rata fraction, the Austrian agency will take into account all U.S. periods of coverage, even if some of these periods coincide with Austrian periods.

Under Austrian law, the maximum benefit rate--79.5 percent of average monthly earnings--is payable when a person has at least 45 years of coverage. Article 12 (6) provides that, in computing the Austrian totalization benefit, the Austrian agency will limit the denominator of the pro rata fraction to 45 years in situations where total periods of coverage under both countries' systems exceed 45 years. This will result in a larger benefit amount than would be payable if the actual duration of coverage were used in the denominator.

The helpless person's allowance is a supplement payable to beneficiaries who require constant care and attention. Article 12 (7) provides that, if a beneficiary is entitled to a prorated benefit from Austria based on work in both the United States and Austria, any helpless person's allowance that may be payable will also be prorated. During the course of negotiations, Austrian officials stated that Article 14, however, will prevent the helpless person's allowance from being reduced in accordance with Article 11 (1) if a person could qualify for the allowance even without the agreement.

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(8) The amount calculated according to subparagraph (1)(c) of Article 11 shall be increased, where appropriate, by increments for contributions for supplementary insurance, the miners' supplementary benefit, the helpless person's allowance and the compensatory supplement.	Article 12 (8) provides that each of the four specified benefits will be paid as a supplement to any Austrian totalization benefit that may be payable. (See the annotation to Article 12 (4)(c) for a description of these supplementary allowances.) These supplements will not be prorated under Article 11 (1), except in the case of the helpless person's allowance which will be prorated in accordance with Article 12 (7) when it is payable only by totalizing U.S. and Austrian periods of coverage.
(9) If the award of benefits under miners' pensions insurance depends on the completion, in specific undertakings, of essentially mining activities, within the meaning of Austrian laws, then only those periods of coverage under United States laws which are based on a similar occupation in a similar undertaking shall be taken into consideration.	In some cases, benefits provided under the separate Austrian pension system for miners are more favorable than those under the general system. Article 12 (9) makes clear that a worker's U.S. periods of coverage will be taken into account to meet the eligibility requirements for benefits under the miners' system, but only if the periods were based on mining activities. It will be the claimant's responsibility to satisfy the miners' system that the periods completed in the United States meet this requirement. If the U.S. periods of coverage, totalized with Austrian periods of coverage under the miners' system, do not qualify the worker for benefits under this special system, the periods will be taken into account for meeting the eligibility requirements for benefits under the Austrian general system.
(10) Special payments ("Sonderzahlungen") shall be payable in the amount of the Austrian partial benefit; Article 10 shall apply as appropriate.	Under the Austrian social security system, benefits are paid 14 times a year, rather than 12, with the special payments (equal to one month's benefits) being made in May and October. Article 12 (10) provides that the Agreement provisions for computing pro rata benefit amounts will also apply to computation of the special benefits.

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Article 13

(1) If a person is entitled to a benefit under Austrian laws without the application of Article 10, the competent Austrian agency shall pay the benefit which would be payable exclusively on the basis of the periods of coverage to be taken into consideration under those laws, provided the person is not entitled to a corresponding benefit under United States laws.

If a person is eligible for an Austrian benefit based on Austrian coverage alone, and is also entitled to a corresponding U.S. benefit (either a regular or a totalization benefit), the Austrian agency will generally pay a prorated benefit in accordance with Article 11 (1), rather than the benefit computed under Austrian domestic law. However, if the person is not entitled to a corresponding U.S. benefit, Article 13 provides that the Austrian agency will pay the domestic law benefit rather than the prorated benefit based on combined periods of U.S. and Austrian coverage. (See the annotations to Articles 11 (1)(b) and (c).)

(2) The benefit amount determined in accordance with paragraph (1) of this Article shall be recalculated in accordance with the provisions of Article 11 as soon as the person becomes entitled to a corresponding benefit under United States laws. This recalculation shall have effect from the beginning date of the benefit payment under United States laws. The irrevocability of previous decisions shall not prevent this recalculation.

Article 13 (2) provides that, where a person is entitled to an Austrian national law benefit without application of the Agreement and subsequently becomes entitled to a regular or a pro rata benefit from the United States, the Austrian benefit will be recalculated, and a prorated benefit will be paid. This new benefit amount will be payable beginning with the month the person becomes entitled to the U.S. benefit. (See the annotation to Article 11 (1)(c) for an explanation of other Agreement provisions that prohibit a recalculation under this provision in certain situations.)

(3) Where, in applying paragraph (2) of this Article, the agency has overpaid a benefit, the overpayment shall be regarded as an advance payment.

Austrian social security agencies are authorized in certain cases to pay a person who is entitled to a benefit a specified monthly amount even before the actual benefit has been computed. If this preliminary payment is higher than the actual amount of the benefit, the resulting overpayment is called an "advance payment" and can be deducted from future benefits. Article 13 (3) provides that if a person who is initially entitled only to a regular Austrian benefit has this benefit recalculated in accordance with Article 13 (2) due to subsequent receipt of a U.S. benefit, any overpayment resulting from payment of the regular Austrian benefit can be adjusted by withholding from the new pro rata amount.

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Article 14

If a person is entitled to a benefit under Austrian laws without the application of Article 10, and if such benefit would be greater than the total of the Austrian benefit calculated in accordance with subparagraph (1)(c) of Article 11 and the corresponding United States benefit, the competent Austrian agency shall pay, as the partial benefit, its benefit so calculated increased by the difference between such total and the benefit which would be payable if Austrian laws alone were applied.

Chapter 2

Benefits Under United States Laws

Article 15

(1) Where a person has sufficient periods of coverage under United States laws to satisfy the requirements for entitlement to benefits under United States laws, the United States agency shall determine the amount of the benefit according to the laws which it applies taking into account the periods of coverage completed only under United States laws.

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Under Article 11 (1), a beneficiary who is entitled to a U.S. benefit and a benefit under Austrian domestic law will generally receive a prorated benefit from Austria rather than the full domestic law benefit. Article 14, however, provides that if this prorated Austrian benefit and the U.S. benefit together are less than the regular Austrian domestic law benefit that would otherwise be payable, the Austrian agency will pay an additional amount sufficient to raise the amount of the combined benefits to the level of the Austrian domestic law benefit. (See also the annotation to Article 13 (1).)

Chapter 2 contains rules for determining U.S. benefit eligibility and amounts when a worker has periods of coverage credited under both the U.S. and Austrian social security systems.

Article 15 (1) makes clear that the United States will not consider a worker's Austrian periods of coverage in computing U.S. benefit amounts if entitlement to the benefit is established based on the worker's U.S. coverage alone. This provision is similar to provisions contained in other U.S. social security agreements and is included because pro rata benefits based on totalization (i.e., combined U.S. and Austrian coverage credits) would almost never be advantageous for a person who is insured under U.S. national law.

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(2) Where entitlement to a benefit under United States laws is established according to the provisions of Article 10, the United States agency shall compute a pro rata primary insurance amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.	Article 15 (2) describes the method of computing U.S. benefit amounts when entitlement is established through totalization of U.S. and Austrian coverage. As stipulated in Article 15 (1), persons qualifying for U.S. benefits based solely on their United States coverage are not eligible for U.S. totalization benefits. Under the procedure outlined in Article 15 (2), the amount of a worker's benefit depends on both the level of his earnings and the duration of his coverage under U.S. Social Security. This computation procedure is described in detail in regulations promulgated by the Department of Health and Human Services (20 CFR 404.1918 as revised July 24, 1984). The first step in the procedure is to compute a theoretical benefit amount as though the worker had spent a full coverage lifetime (i.e., full career) under U.S. Social Security at the same level of earnings as during his actual periods of U.S. covered work. The theoretical benefit is then prorated to reflect the proportion of a coverage lifetime completed under the U.S. program. A coverage lifetime is defined in the regulations as the number of the worker's benefit computation years, i.e., the years which must be used in determining a worker's average earnings under the regular U.S. national computation method.
(3) In determining eligibility for benefits under Article 10, the United States agency shall credit one quarter of coverage for every 3 months of coverage certified as creditable by the Austrian competent agency to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed 4.	Article 15 (3) establishes the procedure to be followed in converting Austrian periods of coverage into equivalent periods under the U.S. system. U.S. periods of coverage are measured in terms of calendar quarters, while Austrian periods of coverage are measured in months. Since 1978, U.S. quarters of coverage have been based on the amount of a person's annual earnings (e.g., for 1990, one quarter of coverage is credited for every $520 in earnings). Under Article 15 (3), SSA will credit one quarter of coverage in a calendar year for every 3 months of coverage certified for that year by the Austrian agency. However, SSA will not credit months of coverage under Austrian laws which fall within a calendar quarter which has already been credited as a U.S. quarter of coverage. In addition, SSA will not credit more than 4 quarters of coverage for any calendar year.

AGREEMENT

(4) Entitlement to a benefit under United States laws which results from Article 10 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of that Article.

(5) This Agreement shall not result in entitlement to a benefit under United States laws unless the person on whose record benefits are claimed has completed at least 6 quarters of coverage under those laws.

ANNOTATIONS AND COMMENTS

Article 15 (4) provides that when a worker who is entitled to a pro rata totalization benefit from the United States acquires additional U.S. coverage which enables him to qualify for an equal or higher benefit based solely on his U.S. coverage, the Social Security Administration will pay the regular national law benefit rather than the totalization benefit.

The United States will not be required to consider Austrian periods of coverage for purposes of determining benefit eligibility in the case of any worker with fewer than 6 quarters of coverage. This provision, which is included in conformity with the requirements of section 233(c)(1)(A) of the Social Security Act, is intended to avoid the administrative burden of processing benefit claims that would result in insignificantly small benefit amounts.

PART IV

MISCELLANEOUS PROVISIONS

Article 16

(1) The competent authorities of the two Contracting States shall make all joint administrative arrangements necessary for the application of this Agreement.

(2) The competent authorities of the two Contracting States shall communicate to each other, as soon as possible, information concerning the measures taken for the application of this Agreement and concerning all changes in their respective laws which may affect its application.

Article 16 lists several duties of the competent authorities under the Agreement. Paragraph 1 authorizes the competent authorities to make any administrative arrangements that may be necessary to implement and administer the Agreement. Paragraph 2 requires that they notify each other of measures they have taken unilaterally to implement the Agreement and of any changes in their respective social security laws that may affect the application of the Agreement.

AGREEMENT

ANNOTATIONS AND COMMENTS

Article 17

Liaison agencies for the implementation of this Agreement shall be:

(a) for Austria, the Main Association of Austrian Social Insurance Agencies ("Hauptverband der oesterreichischen Sozialversicherungstraeger");

(b) for the United States, the Social Security Administration.

Article 17 designates one agency in each country that will have primary responsibility for coordinating implementation and administration of the coverage and benefit provisions of the Agreement. The Social Security Administration is the designated liaison agency for the United States, and the Main Association of Austrian Social Insurance Agencies is the counterpart liaison agency for Austria.

Article 18

(1) The competent authorities, liaison agencies and agencies of the Contracting States, within the scope of their respective authority, shall assist each other in applying this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.

Article 18 (1) provides authority for the two countries to furnish each other nonreimbursable administrative assistance in administering this Agreement. Such assistance would include the taking of applications, and the gathering and exchanging of information relevant to claims filed under the Agreement. Article 18 (1) also permits exceptions to the principle of nonreimbursement if the two countries so agree. Such an exception is contained in Article 8 (1) of the Administrative Arrangement that has been negotiated to implement this Agreement. Article 18 (2) of the Agreement also provides for reimbursement in the case of medical examinations.

(2) Where administration of this Agreement requires an agency of a Contracting State to seek a medical examination of a person in the territory of the other Contracting State, such examination shall, upon request of the competent agency of the first Contracting State and at its expense, be arranged by the agency of the other Contracting State in accordance with its rules.

Article 18 (2) provides that where a medical examination is necessary to establish eligibility for or continuing entitlement to a country's benefits that are payable under the Agreement, and the claimant or beneficiary is located in the other country, the agency of the other country will, upon request, arrange for the examination at the expense of the agency requesting the examination.

AGREEMENT	ANNOTATIONS AND COMMENTS
(3) The statutes of a Contracting State concerning confidentiality shall apply to any information about an individual which is transmitted in accordance with this Agreement to that Contracting State by the other Contracting State.	Both the United States and Austria have statutes and regulations that govern disclosure and provide strict safeguards for maintaining the confidentiality of information pertaining to individuals which is in the possession of their respective Governments. In the United States, these statutes include the Freedom of Information Act, the Privacy Act, section 6103 of the Internal Revenue Code, and pertinent provisions of the Social Security Act and other related statutes. Article 18 (3) provides that personal information pertaining to an individual which one country furnishes to the other under the Agreement will be protected in accordance with the applicable provisions of the other country's privacy and confidentiality laws.
Article 19	
(1) The competent authorities, liaison agencies and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.	Article 19 (1) authorizes direct correspondence between the competent authorities and agencies of the two countries and between these bodies and any person with whom they may need to communicate. The correspondence may be in either English or German.
(2) An application or document may not be rejected by a competent authority, liaison agency or agency of a Contracting State solely because it is in the official language of the other Contracting State.	The competent authority, liaison agency, and agencies of each country may not reject applications or other documents because they are in the language of the other country. The United States already accepts applications and documents without regard to the language in which they are written.

REPORT TO CONGRESS
ON THE FINANCIAL EFFECT
OF THE U.S.-AUSTRIAN SOCIAL SECURITY AGREEMENT

The following tables present estimates on the effects of the proposed U.S.-Austrian social security agreement on the income and expenditures of both countries' social security programs and the number of people who will be affected by the agreement. The estimates were prepared based on the assumption that the agreement would become effective on October 1, 1990.

Table 1 shows the estimated additional costs that would accrue to each country's system as a result of the agreement. These costs would occur because (1) each country would pay additional benefits to certain people who have worked in both the United States and Austria but who could not qualify for benefits from one or both without the agreement, and (2) each country would lose social security tax income from workers who were previously required to contribute to both systems for the same work but who would contribute only to one system under the agreement.

Table 2 shows the number of people who would become eligible for a partial OASDI benefit from the United States or Austria under the agreement. Also shown in Table 2 is the number of employees in each country who, along with their employers, would no longer be subject to dual social security coverage and taxation.

Table 1.--Estimated additional costs to the U.S. and Austrian Social Security systems under a proposed totalization agreement between the two countries

(In millions)

	Fiscal year				
	1991	1992	1993	1994	1995
Additional costs to the U.S. Social Security system:					
Increase in OASDI benefit payments	(1/)	(1/)	(1/)	(1/)	(1/)
Reduction in OASDHI tax contributions	$1	$2	$2	$3	$3
Total	1	2	2	3	3
Additional costs to the Austrian Social Security system:					
Increase in benefit payments	(1/)	(1/)	(1/)	(1/)	(1/)
Reduction in tax contributions	1	2	3	3	3
Total	1	2	3	3	3

1/ Less than $500,000.

Table 2.--Estimated number of persons who would be affected by a proposed totalization agreement between the United States and Austria

	Fiscal year				
	1991	1992	1993	1994	1995
Number of persons receiving a totalized OASDI benefit based in part on employment in Austria under the proposed agreement (in current-pay status at mid-year)	(1/)	(1/)	(1/)	100	100
Number of persons receiving a totalized Austrian benefit based in part on employment in the United States under the proposed agreement (in current-pay status at mid-year)	(1/)	(1/)	(1/)	100	100
Number of U.S. employees in Austria who, along with their employers, would no longer make tax contributions during the year to the Austrian social security system	200	300	350	350	350
Number of Austrian employees in the United States who, along with their employers, would no longer make tax contributions to the OASDHI Trust Funds	200	300	350	350	350

1/ Fewer than 50.

Notes: 1. The above estimates are based on the alternative II-B assumptions of the 1989 Trustees Report.
2. The estimates assume an effective date for the agreement of October, 1990. For purposes of determining the effect in dollars of the agreement on the Austrian system, the currency exchange rate of approximately $0.0787 per schilling was used.

Social Security Administration
Office of the Actuary
August 15, 1989

AGREEMENT

ANNOTATIONS AND COMMENTS

Article 20

(1) Where the laws of a Contracting State provide that any document which is submitted to the competent authority or an agency of that Contracting State shall be exempted, wholly or partly, from taxes, fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the competent authority or an agency of the other Contracting State in accordance with its laws.

Article 20 (1) provides that if the laws of one country exempt documents submitted in connection with a social security claim from fees or charges, that exemption shall also apply if such documents are sent to the other country by or on behalf of a claimant or beneficiary.

(2) Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

If the agency of one country certifies that a copy of a document it furnishes to an agency of the other country is a true and exact copy of an original document, the other country will accept this certification. Nevertheless, the agency of each country will remain the final judge of the probative value of any documents submitted to it.

Article 21

(1) Any claim, notice or written appeal which, under the laws of one Contracting State, must have been filed within a prescribed period with the agency of that Contracting State, but which is instead filed within the same period with the agency of the other Contracting State, shall be considered to have been filed on time.

Article 21 (1) provides that a claim, notice or written appeal which must be filed within a prescribed time limit with an agency of one country will be considered to have been filed on time if it is filed within such limit with an agency of the other country.

AGREEMENT

(2) (a) Any claim for a benefit submitted under Austrian laws shall be considered to be a claim for the corresponding benefit under United States laws for which the applicant meets the entitlement requirements if he provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under United States laws; this shall not apply, however, when the applicant expressly requests that the determination of an old-age benefit under United States laws be deferred.

(b) If an applicant has filed a claim for a benefit with the United States agency and has not specifically restricted the claim to benefits under United States laws, the claim shall also be considered to be a claim for the corresponding benefit under Austrian laws if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under Austrian laws.

Article 22

(1) Disagreements arising in connection with the application of this Agreement shall, as far as possible, be resolved by mutual agreement between the competent authorities of the Contracting States.

(2) If any such disagreement has not been resolved within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting States.

ANNOTATIONS AND COMMENTS

Article 21 (2) provides that a written application submitted to the agency of one country will protect a claimant's right to benefits under the laws of the other country as if the application had been presented in the other country if the applicant, at the time of filing, indicates that the person on whose record benefits are claimed has been covered under social security in the other country. Under Article 21 (2)(a), a claim for Austrian benefits will constitute a claim for U.S. benefits only if the applicant meets the entitlement requirements for the benefit. Since one of the entitlement requirements for U.S. benefits is the filing of an application, a person who files for Austrian benefits will have to perfect his or her claim for U.S. benefits by filing a formal application under U.S. laws. Once a U.S. application is filed, however, the date of the Austrian application will be used to protect the rights of claimants under the U.S. program.

Article 22 (1) obligates the competent authorities to attempt to resolve any dispute between them regarding the Agreement through direct consultation or negotiation.

Article 22 (2) requires both States to establish an arbitral procedure in any case where a disagreement has not been resolved within six months by the competent authorities and either State requests that the matter be submitted to arbitration.

AGREEMENT

ANNOTATIONS AND COMMENTS

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article 23

(1) This Agreement shall not establish entitlement to benefits for any period before its entry into force or a lump-sum death benefit if the person died before its entry into force.

Benefits payable as a result of the Agreement will be paid only for periods beginning with the effective date of the Agreement. Any lump-sum death payments provided by section 202(i) of the U.S. Social Security Act will be payable under the Agreement only if the death occurs on or after the Agreement's effective date.

(2) In determining entitlement to benefits under this Agreement, periods of coverage completed under the laws of a Contracting State prior to its entry into force shall be taken into account; however, neither Contracting State shall take into account periods of coverage occurring prior to the earliest date for which periods of coverage may be credited under its laws.

In determining benefit eligibility and amounts under the Agreement, periods of coverage occurring before the Agreement enters into force will be taken into account. However, the Social Security Administration will not credit Austrian periods of coverage completed prior to 1937, the earliest year for which coverage may be credited under U.S. law.

(3) (a) Subject to the provisions of paragraph (1), this Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force.

(b) In cases to which subparagraph (a) applies, a benefit under Austrian laws due only by virtue of this Agreement shall be determined, at the request of the beneficiary, in accordance with the provisions of this Agreement. If the claim for determination of such benefit is submitted within two years from the date of entry into force of this Agreement, the benefit shall be paid from that date; otherwise, the benefit shall be paid from the date determined under Austrian laws.

Under Article 23 (3), events material to the determination of benefit rights, such as marriage, death, disability, or attainment of a certain age, that occurred prior to the effective date of the Agreement will be considered in applying the Agreement. This provision also extends the retroactive effect of Austrian benefit applications by permitting persons who file for benefits under the Agreement within two years after the Agreement enters into force to receive benefits from the date the Agreement becomes effective.

AGREEMENT	ANNOTATIONS AND COMMENTS
(4) The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.	Article 23 (4) requires that a person claiming benefits under the Agreement file an application either on or after the date the Agreement enters into force.
(5) Determinations made before the entry into force of this Agreement shall not affect rights arising under it.	A decision to award or deny a claim which was rendered prior to the effective date of the Agreement will not prevent a person from filing a new application for additional benefits that may be payable as a result of the Agreement.
(6) This Agreement shall not result in any reduction in the amount of benefits to which entitlement was established prior to its entry into force.	Article 23 (6) guarantees that benefits which are already being paid at the time the Agreement becomes effective will not be reduced as a result of its entry into force. (See also the annotation to Article 11 (1)(c).)
Article 24	
This Agreement shall not affect any existing rights under Austrian laws of any person who has suffered disadvantages in the field of social security because of political or religious reasons or by reason of ethnic origin.	Article 24 guarantees that the Agreement will not impair rights accorded under Austrian laws to persons who have suffered persecution based on political, ethnic, or religious grounds. (See also the annotation to Article 11 (1)(c).)
Article 25	
If a person becomes eligible for a benefit under Austrian laws without the application of Article 10 within a period of 5 years from the date of the entry into force of this Agreement, Chapter 1 of Part III shall not apply.	The Austrian benefit provisions of the Agreement will not apply to persons who become eligible for a benefit from Austria without application of the Agreement within 5 years after the Agreement enters into force. This provision ensures that persons with U.S. and Austrian coverage who become eligible during the transition period will receive a full domestic law benefit from Austria, rather than a reduced pro rata benefit. (See also the annotation to Article 11 (1)(c).)
Article 26	
This Agreement may be amended in the future by supplementary agreements, which from their entry into force shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.	Article 26 provides that the Agreement may be amended by future supplementary agreements and that such agreements may have retroactive effect. After a supplementary agreement becomes effective, it will thereafter be considered an integral part of the Agreement.

AGREEMENT	ANNOTATIONS AND COMMENTS
Article 27	
(1) This Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.	Each country will follow its own constitutional procedures for approval of the Agreement. In the United States, the Agreement must be presented to the Congress for a review period of 60 days during which at least one House of Congress has been in session as required by section 233(e) of the U.S. Social Security Act. In Austria, the Agreement must be approved by Parliament. The Agreement will enter into force on the first day of the third calendar month after each Government has received formal notification of approval from the other Government.
(2) This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one of the Contracting States to the other Contracting State.	Article 27 (2) provides for the Agreement to remain in effect until the expiration of 1 calendar year after the year notice of termination is given by one of the countries.
(3) If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.	Article 27 (3) provides that, in the event the Agreement is terminated, a person will retain benefit rights acquired before termination; special arrangements would determine the extent to which each country would recognize benefit rights in the process of being acquired at the time of termination--for example, periods of coverage which had not yet resulted in fully insured status.
IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.	
DONE at Vienna on July 13, 1990, in duplicate in the English and German languages, both texts being equally authentic.	The agreement was signed in Vienna on July 13, 1990, by Mr. Michael J. Habib, Charge d'Affaires at the United States Embassy, and Ambassador Eric Nettel of the Austrian Foreign Ministry.
FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA:
Michael J. Habib	Eric Nettel